IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1186 of 2004

in

SPECIAL CIVIL APPLICATION No 12050 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KASHIRAM BHAVDUBHAI BHOY

Versus

REVENUE SECRETARY (APPEALS)

Appearance:

1. LETTERS PATENT APPEAL No. 1186 of 2004

MS HINA DESAI for Appellant No.

..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 03/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Admit. Learned AGP, Mr.P.R.Abichandani is directed to accept notice in this appeal. Ms.Desai for the appellant to supply copy of the memo of appeal along with its annexures to Mr.Abichandani during the course of the day.

#. Having regard to the facts and circumstances of the case, this appeal is heard and disposed of by this order today. Appellant-petitioner-Kashiram Bhavdubhai Bhoy is a tribal person residing at the remote place of village Bilma of Taluka Ahwa, District Dangs. He was not having any agricultural land for cultivating, therefore, he applied for the land from the State Government for cultivation on yearly basis and the permission was granted to him in the year 1991 for cultivation of the land on yearly basis. Since then the appellant was cultivating the land. In 1995 he applied to the respondent No.2 for regularizing his right to cultivate the said land, but by an order dated 28.1.1999 (Annexure-D) respondent No.2 informed the petitioner that it cannot be regularized as the land in question was required for some public purpose. This impugned order dated 28.1.1999 passed by the Collector, respondent No.2 was challenged by the appellant-petitioner by way of revision application under Section 211 of Bombay Land Revenue Code on 18.12.2002 with an application for condonation of delay before the respondent No.1. The same was rejected by the respondent No.1 by his order dated 9.5.2003 (Annexure-E) simply on the ground that there was a gross delay in filing the revision application late before him against the impugned order at Annexure-D passed by the Collector on 28.1.1999 and the reasons assigned in it were wholly unsustainable for condoning the delay.

#. Being aggrieved by the order dated 9.5.2003 the petitioner filed Special Civil Application No.12050 of 2003 before this court under Art.226 and 227 of the Constitution of India. However, learned Single Judge of this Court (Coram : K.A.Puj, J.) by an order dated 18.8.2003 dismissed the petition summarily on the ground of delay as well as on merits. Hence, this Letters Patent Appeal.

#. Ms.Desai, learned counsel for the appellant submitted that the learned Single Judge erred in holding that "While rejecting the said application merits of the matter were also taken into consideration by the revisional authority." She submitted that respondent No.1 has nowhere stated in his impugned order at Annexure-E dated 9.5.2003 that he has rejected the revision application on merits. Having gone through the impugned order at Annexure-E dated 9.5.2003, Mr.P.R.Abichandani, learned AGP for the respondents also conceded that the respondent No.1 had not gone into the merits and rejected the revision application of the appellant-petitioner on merits. It seems that an obvious error was committed by the learned Single Judge while dismissing the petition by holding that, "while rejecting the said application merits of the matter were also taken into consideration by the revisional authority". It seems that because of the fact mentioned in first para of the order passed by the respondent No.1, such a mistake was committed by the learned Single Judge. Having carefully gone through the impugned order at Annexure-E dated 9.5.2003 it is clear that the respondent No.1 had rejected the revision application of the appellant-petitioner only on technical grounds of delay and laches in filing the said revision application late before him after a period of more than 3 to 4 years.

#. Ms.Desai then submitted that the respondent No.1 committed grave error in dismissing the revision application of the appellant-petitioner on the ground of delay and laches. She submitted that the appellant-petitioner is absolutely a poor person. He is an illiterate adivasi tribal man and staying in a remote village of district Dangs and even after the dismissal of his application by the Collector, he remained in constant touch with the Collector's office and other revenue authorities for regularizing his right for cultivating the land and that he was under bonafide impression that his case for regularization may be reconsidered, but when there was no positive response from the authority, then finally he decided to challenge the order passed by the Collector before the respondent No.1. Under the circumstances, the respondent No.1 should not have taken such a technical view of the matter and dismissed his revision application on the ground of delay and laches. She also submitted that if the delay was condoned, then at the most revision application of the appellant-petitioner would have been decided on merits by the respondent No.1 and in view of the judgment of the Hon'ble Supreme Court in case of Collector, Land Acquisition, Anantnag vs. Mst.Katiji reported in AIR

1987 SC 1353 she submitted that when substantial justice and technical considerations were pitted against each other, then cause of substantial justice should have been preferred by the authority by condoning the delay and deciding the matter on merits. She also submitted that by refusing to condone the delay meritorious matter of the petitioner was thrown out at the very threshold by the respondent No.1, which was against the law.

There is lot of substance in the submission of Ms.Desai. There are cases and cases in which delay may have occurred and in some cases delay may not have been condoned. But each case has to be considered on its own merits. Admittedly, in the instant case, the appellant-petitioner was a landless tribal person. He was allotted land for the purpose of cultivation on yearly basis way back in the year 1991 and since then he was cultivating the land till the year 1995. When he applied for revision before the Collector, the permission was refused on the ground that it may be used for some other public purpose in future. We are not going into the merits of the order passed by the learned Collector as we are of the considered opinion that the same is required to be examined by the respondent authority in revision. However, case of Brijlal requires to be kept in mind by the authority while deciding revision on merits. In case of Brijlal v. Board of Revenue reported in AIR 1994 SC 1128, the appellant-Brijlal was allotted the land in the year 1970 on temporary basis and in 1974 he applied for permanent allotment of the said land, but the application was rejected on the ground that from the photo affixed on the application form, it appeared that he was a minor. The matter went right up to the Hon'ble apex court and while setting aside the judgment of the High court and authorities, the authorities were directed to make permanent allotment of the land in favour of the appellant-Brijlal by holding that the appellant-Brijlal was cultivating the land since 1970, therefore, it would be travesty of justice to dispossess the person from the land in question, which he had nourished for over a period of two decades. In the instant case, the appellant-petitioner nourished and developed the land for a period of a decade or so. Without considering all these aspects, the respondent No.1 straightaway rejected the revision application on technical ground of delay and laches. Unfortunately, the learned Single Judge of this court rejected the writ petition without assigning any good reasons and without taking into consideration the law laid down by the Hon'ble Supreme Court way back in 1989 in case of Mst.Katiji (supra).

#. In view of the above discussion, this appeal is allowed and the judgment and order dated 18.8.2003 passed by the learned Single Judge of this court dismissing Special Civil Application No.12050/03 is hereby quashed and set aside and writ petition i.e. Special Civil Application No.12050/03 is allowed to the extent that the impugned order at Annexure-E dated 9.5.2003 passed by the respondent dismissing the revision application of the appellant-petitioner on the ground of delay and laches is hereby quashed and set aside and the said revision application is remanded to the respondent No.1 for deciding the same on merits after condoning the delay in filing the revision application late.

It is hoped and trust that the respondent No.1 while deciding the revision application of the appellant-petitioner on merits may keep in mind the judgment of the apex court in case of Brijlal (supra) and decide the same after extending opportunity of personal hearing to the appellant-petitioner and decide it in accordance with law as early as possible. Accordingly, this appeal is allowed with no order as to costs.

(B.J.Shethna, J.)

(M.C.Patel, J.)

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